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## II. BOOK REVIEWS.

**COMMENTARIES ON THE LAW OF TORTS.** A philosophic discussion of the general principles underlying civil wrongs *ex delicto*. In two volumes. By Edgar B. Kinkead. San Francisco: Bancroft-Whitney Company. 1903. pp. xxxi, 1-851; xv, 852-1739. 8vo.

The general conception of this work is most ambitious. It purports to be a statement and general discussion, from a logical and philosophical point of view, of all the principles of law comprised within the scope of its subject. The main plan of the volumes is excellent. First the author discusses fundamental doctrines and considers the classification of those legal rights which form the basis of this branch of the law; then he approaches the subject from the side of the person doing the tortious act, his status or position, and his relation to the injured person; and finally the writer deals in a very comprehensive way with the specific wrongs which constitute the vast number of actionable torts.

The introductory discussion and that dealing with the subject of fundamental rights is rather inadequate. It lacks the clearness and conciseness so necessary to a successful exposition of subjects of this character. The treatment, however, of the law of torts from the point of view of the actor and his relation to the injured person is the most satisfactory portion of the work and is of real value. The principles determining and defining the various specific torts are for the most part clearly settled, but the application of those principles to the varied, complex relations of our modern life and the effect upon them of the situation or status of the actor, are even yet often matters of considerable doubt or difficulty. It is in this field, in the reviewer's experience, that the tort problems of our present day practice are most frequently arising. Therefore the writer very wisely emphasizes this phase of his topic, and his treatment of it will be found most helpful and practical.

The whole work is most comprehensive in its scope, and, in outline at least, considers almost every problem in any wise directly related to the law of torts. It is, however, but a general summary, and though it presents an excellent general view of the whole subject, for the more detailed working out of any particular narrow question this book will be found to be but the starting-point. As this department has often been obliged to say before, the author has taken too large a subject to be able to do the most valuable work. If he had been content to devote himself solely to that portion of his topic dealing with the status and relations of persons, and had gone to the bottom of that subject, his real scholarship would have produced a work truly scientific and of much greater service. The book will, from its comprehensiveness, prove an excellent reference work, and its full citations of cases and other authorities will in a measure make up for the often rather meager discussion of the text. As in most recent publications, there is a long table of cases cited, but it seems at least doubtful whether this will be worth the labor expended in its compilation or the more than two hundred pages which it occupies. This time and space could, it would seem, have been more advantageously expended upon the index. That of this work, however, is of more than average excellence and renders the vast amount of material in the book quite readily accessible.

W. H. H.

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**THE AMERICAN LAW OF LANDLORD AND TENANT.** By John N. Taylor. Ninth Edition. Revised by Henry F. Buswell. In two volumes. Boston: Little, Brown & Company. 1904. pp. cxv, 541; xv, 592. 8vo.

When a legal text-book has warranted conservative publishers to issue nine editions it is some evidence that the book is of considerable merit and is so recognized by the profession. This holds particularly true of Taylor's *Landlord and Tenant*. Since 1844, when the first edition was put forth in one

volume containing only three hundred and ninety-eight pages of text, about nineteen hundred cited cases, and an appendix of forms covering fifty-five pages, Mr. Taylor's work has been considered authoritative on the American law of landlord and tenant. Between the years 1844 and 1873 six editions of the work appeared, edited by the author. In that period the number of pages had not quite doubled. The seventh edition, published in 1879 after the author's death, was the work of Mr. Joseph N. Willard, who had assisted the author in the preparation of previous editions. With the appearance of the eighth edition, which was by the present editor, Mr. Henry F. Buswell, the work was changed to two volumes of about five hundred pages each, including the forms. Seventeen years were allowed to pass before the appearance of the ninth edition. In that period many cases within the field covered by the book were decided, which made necessary a considerable revision and also some addition to the text. The work has been done with a careful hand. All the additions in the text and notes are put in brackets. The chief expansion has been made on the subjects of covenants between the lessor and the lessee; surrender; assignments; forfeiture; rights of mortgagors and mortgagees under leases; rights to fixtures as between landlord and tenant; mining leases; railroads and receivers as lessors and lessees; and equity jurisdiction as applied to the relation between landlord and tenant. About twelve hundred cases were added, which brings the total number of cases cited to approximately ten thousand or about five times the number cited in the first edition. The book now appears in two volumes aggregating nine hundred and sixty-eight pages of text and notes, and one hundred and six pages of forms.

A new edition of this work was very desirable at this time. The eighth edition was so old that it was no longer of as great present practical value as Judge McAdam's work on the same subject, the third edition of which appeared in 1900. Mr. Taylor's book does not cover so large a field as that of Judge McAdam; but being practically the same in size,—allowing for differences in typography and leaving out of account volume three of McAdam, which is devoted solely to summary proceedings under New York law,—it covers its portion of the field somewhat more fully. It contains roughly about two thousand more citations. There is an elaborate index of sixty pages. The arrangement, presswork, and binding are of a very high order.

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**THE ART OF CROSS-EXAMINATION.** Together with the cross-examinations of important witnesses in some celebrated cases. By Francis L. Wellman. New York: The Macmillan Company. London: Macmillan & Co., Ltd. 1903. pp. 283. 8vo.

“It is experience, and one might almost say experience alone, that brings success in the art of advocacy.” This is one of the sentences of Mr. Wellman's opening chapter. The truism, found in one form or another in nearly all treatises on the examination of witnesses, is a succinct statement of the reason why many of them are of little practical use. The results drawn by the authors from their own or others' experiences do not become the reader's by their mere presentation abstractly to him. He must see how the results were reached. Lacking experience of his own, he must have it at second hand. It is Mr. Wellman's realization of this need which gives value to his book. He is nothing if not concrete. Each general principle stated seems merely to form a hook on which to hang the particular experiences from which it was induced, as frequently the author's own as those which have come under his immediate observation in a long practice at the New York bar. These actual cross-examinations, so copiously quoted from, are modern, up-to-date, and doubly useful as the product of the kind of litigation that modern conditions give rise to. The chapter on the examination of experts is especially good. In fact Mr. Wellman has given us an excellent substitute for time spent with observant eye and ear in court rooms, with the added advantage that our material has been selected for